

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

ANTHONY ANDRE SHARP,

Petitioner,

v.

EDWARD BORLA,

Respondent.

Case No. 1:24-cv-00326-KES-EPG-HC

FINDINGS AND RECOMMENDATION TO  
GRANT RESPONDENT'S MOTION TO  
DISMISS AND DISMISS PETITION FOR  
WRIT OF HABEAS CORPUS WITHOUT  
PREJUDICE

(ECF No. 10)

Petitioner Anthony Andre Sharp is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

**I.**

**BACKGROUND**

On August 24, 2016, Petitioner was convicted by a jury in the Fresno County Superior Court of possession of child pornography. On November 29, 2016, Petitioner was sentenced to an imprisonment term of twenty-five years to life. (LD<sup>1</sup> 1.) At the time of the 2016 offense, Petitioner was civilly committed to Coalinga State Hospital as a sexually violent predator. (ECF No. 10 at 1.<sup>2</sup>)

Petitioner initiated two appeals that were subsequently dismissed. (LDs 2, 3.) On June 3, 2019, Petitioner filed a petition for writ of habeas corpus in the California Supreme Court, which

<sup>1</sup> "LD" refers to the documents lodged by Respondent on June 7, 2024. (ECF No. 11.)

<sup>2</sup> Page numbers refer to the ECF page numbers stamped at the top of the page.

denied the petition on August 21, 2019. (LDs 6, 7.) On August 10, 2023, Petitioner filed a petition for review of the appellate court's denial of a resentencing petition. (LD 4.) On September 13, 2023, the California Supreme Court denied the petition for review. (LD 5.) Petitioner also filed approximately sixteen lower state court petitions. (ECF No. 10 at 2 n.1.)

On March 15, 2024, Petitioner filed the instant federal petition for writ of habeas corpus. (ECF No. 1.) On June 7, 2024, Respondent filed a motion to dismiss the petition for nonexhaustion. (ECF No. 10.) To date, no opposition or statement of nonopposition has been filed, and the time for doing so has passed.

## II.

### DISCUSSION

A petitioner in state custody who is proceeding with a federal petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982). A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v. Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971).

In the petition, Petitioner appears to challenge a detainer, asserting that "he has already fulfilled his civil commitment at Coalinga State Hospital, thus a new commitment without proper due process violates a substantive right." (ECF No. 1 at 5, 15.) Petitioner also appears to challenge "the fact-finding process of the Fresno Superior Court [as] unreasonable." (Id. at 7, 14.) Petitioner alleges that he has "exhausted the lower court remed[ies]," but the petition also states that the California Supreme Court simply returned Petitioner's petition for review with no order issued. (Id. at 15, 2.)

In his state habeas petition, filed in the California Supreme Court on June 3, 2019, Petitioner challenged the legality of his sentence, specifically regarding the use of prior convictions as strikes. (LD 6.) In his petition for review, filed in the California Supreme Court on

August 10, 2023, Petitioner challenged the denial of his resentencing petition. (LD 4.) Upon review of the two petitions filed in the California Supreme Court, the Court finds that Petitioner did not present the claims he now raises in the instant petition to the California Supreme Court in his state habeas petition or the petition for review. Regarding Petitioner's allegations that the California Supreme Court simply returned Petitioner's petition for review with no order issued, (ECF No. 1 at 2), a petitioner can satisfy the exhaustion requirement by providing the highest state court with a *full and fair opportunity* to consider each claim before presenting it to the federal court. "Submitting a new claim to the state's highest court in a procedural context in which its merits will not be considered absent special circumstances does not constitute fair presentation." Roettgen v. Copeland, 33 F.3d 36, 39 (9th Cir. 1994) (citing Castille v. Peoples, 489 U.S. 346, 351 (1989)). "[T]he mere act of sending a procedurally defective set of claims to the California Supreme Court does not, for exhaustion purposes, constitute 'fairly presenting' those claims to the state court." Regennitter v. CSP-CORCORAN, No. 1:15-cv-00160-LJO-JLT, 2015 WL 2081814, at \*3 (E.D. Cal. May 4, 2015) (collecting cases).

Based on the foregoing, the Court finds that Petitioner has not sought relief in the California Supreme Court for the claims that he raises in the instant petition, and thus, the Court cannot proceed to the merits of those claims. 28 U.S.C. § 2254(b)(1). Therefore, dismissal is warranted for failure to exhaust state judicial remedies.

## II.

### RECOMMENDATION

Based on the foregoing, the undersigned HEREBY RECOMMENDS that:

1. Respondent's motion to dismiss (ECF No. 10) be GRANTED; and
2. The petition for writ of habeas corpus be DISMISSED WITHOUT PREJUDICE for failure to exhaust state judicial remedies.

This Findings and Recommendation is submitted to the assigned United States District Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within **THIRTY (30) days** after service of the Findings and Recommendation, any party may file

1 written objections with the court and serve a copy on all parties. Such a document should be  
2 captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies to the  
3 objections shall be served and filed within fourteen (14) days after service of the objections. The  
4 assigned United States District Court Judge will then review the Magistrate Judge’s ruling  
5 pursuant to 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within  
6 the specified time may waive the right to appeal the District Court’s order. Wilkerson v.  
7 Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th  
8 Cir. 1991)).

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10 IT IS SO ORDERED.

11 Dated: **August 21, 2024**

12 /s/ Eric P. Grogg  
13 UNITED STATES MAGISTRATE JUDGE  
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